Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

## I. DISPUTE

1. a. Whether there should be additional reimbursement of $1,502.36 for date of service 01/26/01.

   b. The request was received on 01/25/02.

## II. EXHIBITS

1. Requestor, Exhibit I:

   a. TWCC 60 and letter requesting medical dispute resolution dated 03/22/02
   b. HCFA 1450
   c. TWCC 62 forms
   d. EOB(s) from other insurance carriers
   e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

2. Respondent, Exhibit II:

   a. TWCC 60 and letter responding to request for medical dispute dated 03/26/02
   b. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

3. The Commission case file does not contain a carrier Notice of Medical Dispute sign sheet as per Rule 133.307 (g) (4). All information in the case file will be reviewed.

## III. PARTIES' POSITIONS

1. Requestor: The requestor states in the correspondence dated 03/22/02, "The Carrier denied payment with payment exception code 'M' for all items provided in the UB-92, which were Fee Codes with a 'MAR' and treatment codes without a 'MAR.' The Carrier failed to provide an adequate response to the request for reconsideration….the Carrier has not responded to the initial filing of the Medical Dispute Resolution request….it is the requestor's position that the Carrier is required to pay the entire amount in dispute."

2. Respondent: The respondent representative states in correspondence dated 03/26/02, "Regarding the medical dispute resolution request of March 11, 2002, please be advised that the amount paid was pursuant to the medical fee guidelines."

## IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 01/26/01.

2. The provider billed $12,110.44 for disputed date of service.

3. The carrier reimbursed the provider $8,033.35 for disputed date of service.

4. The total amount in dispute is $1,502.36 for date of service.

5. The service was performed at an ambulatory outpatient setting. The provider unbundled charges according to Rule 133.1 (a) (E) (16) which states, "Unbundling—Submitting bills in a fragmented way, using separate billing codes for multiple treatments or services when there is a single billing code that includes all of the treatments or services that were billed separately, or fragmented one treatment or service into its component parts and coding each component part as if it were a separate treatment or service."

6. The carrier denied charges by denial codes:
"*M - 360 ALLOWANCE FOR THIS PROCEDURE WAS MADE AT THE 'FAIR AND REASONABLE' AMOUNT FOR THIS GEOGRAPHICAL AREA";
"*M – 426 REIMBURSED TO FAIR AND REASONABLE."

## V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgical center. Commission Rule 134.401 (a) (4) states ASC(s) "…shall be reimbursed at a fair and reasonable rate…"

Per the Texas Worker's Compensation Act and Rules §413.011(d):
Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

Commission Rule 134.304 (i) (1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. The carrier did not submit a methodology to determine fair and reasonable.

Because there is no current fee guideline for ASC(s), the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier has not submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement and that meets the requirements of Rule 133.304 (i). The provider submitted EOB(s) from other carriers in an effort to document fair and reasonable reimbursement. Regardless of the carrier's lack of methodology, the burden remains on the provider to prove that the amount of reimbursement requested is fair and reasonable. Recent SOAH decisions have placed minimal value on EOB(s) for documenting fair and reasonable reimbursement. The willingness of some carriers to reimburse at or near 100% of the billed charges does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. The EOB(s) prove no evidence of amounts paid on behalf of managed care patients of ASC(s) or on behalf of other non-workers' compensation patients with an equivalent standard of living. Therefore, based on the evidence available for review, the provider is not entitled to additional reimbursement.

The above Findings and Decision are hereby issued this 24th day of June, 2002.

Donna M. Myers, B.S.
Medical Dispute Resolution Officer
Medical Review Division

DMM/dmm

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.